IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO. 997 OF 2003

IN

SUMMARY SUIT NO. 2236 OF 2002

M/s. AMSIT .....**Plffs.**
vs.
SKF Bearings India Ltd .....**Defnds.**

Ms. Deepa Chavan i/b. Little and Co. for the plaintiffs.

Mr. Colabawala i/b. Madekar and Co. for the defendants.

CORAM: S.U. KAMDAR, J.

DATE : 17TH AUGUST, 2005.

P.C. :.

1. The present suit is filed on the basis of an invoice bearing no. 5675 dated 10.11.2001 for the recovery of sum of Rs.7,37,461/-. The amount arises out of a written contract which is annexed at Ex.A to the plaint which inter-alia provides for printing charges payable at the rate of Rs.49/- for printing of the plaintiff's magazine title

'Evolution'. There is no dispute as to the printing work carried out by the defendant and the invoice issued dated 10.11.2001 for the sum of Rs.7,37,461/-. However it is the case of the defendant that the contract has been entered into fraudulently by the defendant with the plaintiff company and the said fraud has been committed by an employee of the defendants company viz. by one Mr. Nilesh Unnarkat. It his case that the price iof Rs.49/- per magazine fixed as printing charges is much more and actual price is not more then Rs.39/- per copy. However he contends that by virtue of fraud committed by Nilesh Unnarkat who is the employee of the defendant the the contract at higher rate is entered into and therefore plaintiff is not entitled to the payment at the rate of Rs.49/- per magazine as contemplated in the contract.

3. It is an admitted position that so called fraud has been discovered sometime in or about 14.1.2002. Learned counsel for the defendant has not been able to show that any action is taken

against his own employee Nilesh Unnarkat in respect of such alleged fraud in last three years. It is the case of the defendant that a sum of Rs.1,70,000/- has been received by Mr. Unnarkat from the plaintiff towards the commission for entering into the aforesaid contract still the defendant has taken no action against the said employee for recovery of the said amount of Rs.1,70,000/- also. In the light of the aforesaid conduct on the part of the defendant it is not possible to accept the contention of the defendant that the plaintiff is not entitled to the aforesaid amount as per contract on the ground of alleged fraud by their own employee. However with a view to give an opportunity to the defendant to defend the suit, I pass the following order :

(i)Defendnat to deposit a sum of Rs.7.00 lacs within a period of four weeks. If the defendant fails to deposit the amount as aforestated the

plaintiff will be entitled to the entire decreetal amount.

(ii) If the amount is paid as aforestated, then suit is transferred to the list of Commercial Causes. Written statement or points of defence to be filed four weeks from today. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.

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